INDEX.

	PAGE
Summary Statement of the Matter Involved	1
Opinions Below	4
Jurisdiction	4
Question Presented	5
Reasons for Granting the Writ	5

POINTS.

I.	The decision of the Circuit Court conflicts with a decision of the Third Circuit	7
II.	The decision of the Circuit Court is probably in conflict with the applicable decisions of this Court	8
III.	The precise question presented by this case is an important question of federal law which has not been ultimately and conclusively settled, but should be so settled, by this Court	11
IV.	The Circuit Court has sanctioned so far a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision	11

TABLE OF CASES CITED.

	PAGE
Automatic Canteen Co. v. *Federal Trade Comm.*, 97 L. ED. 899	12
Central Bank v. *United States*, 97 L. ED. 872	13
Dalehite v. *United States*, 97 L. ED. 929	13
Ex Parte Virginia, 100 U. S. 339	10
Ex Parte Young, 209 U. S. 123	8
Francis v. *Dolan, Massachusetts Superior Court*, No. 456845	10
Petition of O'Leary, 325 Mass. 179	10
Picking v. *Penn. R.R. Co.*, 151 F. (2d) 240, 152 F. (2d) 753	5, 7, 8
Screws v. *United States*, 325 U. S. 91	9
Shelley v. *Kraemer*, 334 U. S. 1	9
Tenney v. *Brandhove*, 341 U. S. 367	8, 9, 12
Unexcelled Chemical Corp. v. *United States*, 97 L. ED. 486	12
United States v. *Williams*, 341 U. S. 70	9

STATUTES CITED.

8 U. S. C. 43	1, 4, 5
28 U. S. C. 1254 (1)	5
28 U. S. C. 1291	5
28 U. S. C. 1343 (3)	5
Massachusetts General Laws (Ter. Ed.) Chapter 123, Section 116	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. .....

JAMES FRANCIS,

Petitioner,

AGAINST

FREDERIC A. CRAFTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Summary Statement of the Matter Involved.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

James Francis, referred to herein as the Petitioner, respectfully prays for a Writ of Certiorari to review a judgment of the United States Court of Appeals for the First Circuit, entered April 22, 1953, which affirmed a judgment of the United States District Court for the District of Massachusetts.

Summary Statement of the Matter Involved.

On June 23, 1952, James Francis filed a Bill of Complaint (R. 1) seeking damages under the Third Civil Rights Act, 8 U. S. C. #43, against the respondent, Frederic A. Crafts,

Special Justice of the Second District Court of Eastern Middlesex, Commonwealth of Massachusetts, and other officials of said Commonwealth. The Bill alleged that the respondent, a judicial officer of the Commonwealth of Massachusetts, acting under color and purported authority of the laws of Massachusetts, subjected the petitioner to the deprivation of rights secured to him by and under the Constitution and laws of the United States, to wit: that the respondent, on March 19, 1940, committed him to the Department of Defective Delinquents at the Bridgewater State Farm, a penal institution under the jurisdiction of the Department of Correction for the Commonwealth of Massachusetts (R. 25), without affording him an opportunity to defend; without a fair and impartial hearing; and in a completely ex parte proceeding, at which neither the petitioner nor anyone in his behalf were present or represented (R. 4); thereby depriving the petitioner of his right to liberty without due process of law (R. 8) as guaranteed to him under the Constitution and laws of the United States (R. 8); and that the respondent purported to act under color of and in accordance with the authority of the laws of Massachusetts (R. 8).

The petitioner further alleged that he was released from custody on March 27, 1952 by virtue of a Writ of Habeas Corpus from the Massachusetts Superior Court for the County of Suffolk (R. 8).

The respondent moved to dismiss (R. 9) and for summary judgment (R. 10), submitting an affidavit (R. 11) with exhibits annexed (R. 14, 15, 18, and 20). In his affidavit the respondent asserted that he was a Special Justice of the Second District Court of Eastern Middlesex; that said Court was a court of general jurisdiction and that on March 19, 1940 he was sitting in his judicial capacity as both Special and Acting Justice of said Court. The affidavit further stated that on March 19, 1940 a report was pre-

sented to him by the Superintendent of the Walter E. Fernald School, a school for the feebleminded within the jurisdiction of said Court; that the petitioner was an inmate therein and was not a proper subject for retention therein, and requesting the transfer of the petitioner to the Department of Defective Delinquents (R. 12, 14); that notice was given to the Massachusetts Department of Mental Health which caused a written report to be made to him (R. 12, 15); that he made inquiry into the facts and entered an order for removal of the petitioner to a department for defective delinquents under and in accordance with Massachusetts General Laws, Chapter 123, Section 116 (R. 12, 18); and that the respondent was informed and believed that the petitioner was a voluntary inmate of the Fernald School, and that the mother of the petitioner, the petitioner being then a minor, was present at the Fernald School and assented to the removal (R. 12).

Based on this affidavit, the respondent advanced as grounds for his motions that he merely assented to the removal of the plaintiff from one institution to another (R. 10); that the Statute of Limitations had run (R. 10); and that he was immune, being a judge of a court of general jurisdiction (R. 10).

Thereupon the petitioner moved for summary judgment (R. 21) on the grounds that there was no issue of material fact to be tried and that he was entitled to summary judgment as a matter of law, despite the fact that it appeared from all the papers on file that the petitioner was committed without notice, hearing, or opportunity to defend.

The District Court in its decision (R. 22) ruled that the facts, as they appeared in the pleadings and affidavits, were not in dispute and that the case was properly one for summary judgment (R. 23). The District Court further made the following conclusions of fact and rulings of law based

on these material facts, namely: that the respondent purported to act under authority of the laws of Massachusetts (R. 25); that, as a result of the order made by the respondent, the petitioner ceased to be a voluntary inmate of a school for the feebleminded under the jurisdiction of the Department of Mental Health and became an involuntary inmate of a penal institution under the Department of Correction (R. 25); that the order required a judicial determination that the plaintiff was delinquent, i.e. a wrongdoer, in addition to being mentally defective (R. 26); that the respondent acted without giving the petitioner notice or an opportunity to be heard (R. 25); that such proceedings were lacking in the essential elements of due process and were a violation of the petitioner's rights under the Fourteenth Amendment (R. 25); and that the respondent thereby deprived the petitioner of these rights (R. 25, 26). However, the Court went on to rule that the respondent was immune from liability, being a judge, (R. 30).

From the Final Judgment of the District Court (R. 22) dismissing the Bill of Complaint the petitioner appealed and the Circuit Court affirmed (R. 44), stating in its Opinion (R. 37) that state judicial officers are immune from the provisions of the Third Civil Rights Act, 8 U. S. C. #43.

Opinions Below.

The opinion of the United States District Court for the District of Massachusetts (R. 22) is reported in 108 F. Supp. 884. The opinion of the United States Court of Appeals for the First Circuit (R. 37) is reported in 203 F. (2d) 809.

Jurisdiction.

This is a petition for Writ of Certiorari to review a judgment of the United States Court of Appeals for the First Circuit (R. 44) entered April 22, 1953 affirming the

Final Judgment of United States District Court for the District of Massachusetts (R. 22) entered December 15, 1952 dismissing petitioner's Bill of Complaint in an action for deprivation of the petitioner's civil rights under the Third Civil Rights Act, 8 U. S. C. #43, wherefore the District Court had original jurisdiction (28 U. S. C. #1343 (3); the Circuit Court had appellate jurisdiction (28 U. S. C. 1291); and this Court has jurisdiction to review by Writ of Certiorari by virtue of 28 U. S. C. 1254 (1).

Question Presented.

The question presented is whether state judicial officers are amenable to the provisions of the Third Civil Rights Act, 8 U. S. C. #43.

Reasons for Granting the Writ.

I. *The decision of the Circuit Court conflicts with a decision of the Third Circuit.*

The Third Circuit in the case of *Picking* v. *Penn. R.R. Co.*, 151 F. (2d) 240, *rehearing denied* 152 F. (2d) 753, expressly held that state judicial officers are liable under the provisions of the Third Civil Rights Act *to the extent indicated by that statute.*

II. *The decision of the Circuit Court was decided in a way probably in conflict with the applicable decisions of this Court.*

As more fully pointed out in the brief annexed hereto, this Court has affirmatively held that state judges are amenable to the provisions of the federal laws as no state can confer authority on its officers to violate federal laws; that the mere fact the act is by the judicial branch of the state government does not confer immunity; and that this Court has declared that a state officer is liable in such case

where abuse or misuse of state conferred authority violates a federal law.

III. *The precise question presented by this case is an important question of federal law, which has not been ultimately and conclusively settled, but should be so settled by this Court.*

Among other things this case involves solution of the important and vexing problem of the rights of individuals as against the powers and privileges of state judges.

IV. *The Circuit Court has sanctioned so far a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.*

The Circuit Court has sanctioned the act of the District Court in going beyond the legitimate limits of statutory construction and has become party to unwarranted judicial legislation. The Circuit Court, as well as the District Court, has failed to apply the rules of statutory construction as laid down by this Court and has failed to follow this Court's decided cases. In addition thereto, the Circuit Court failed to treat certain questions raised by the petitioner which were material to the issue before said Court, as will be shown in brief annexed hereto.

Wherefore, it is respectfully prayed that a Writ of Certiorari issue to the United States Court of Appeals for the First Circuit.

Boston, Massachusetts, July 16, 1953.

Respectfully submitted,

ISADORE H. Y. MUCHNICK,
Attorney for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. .....

JAMES FRANCIS,

Petitioner,

AGAINST

FREDERIC A. CRAFTS,

Respondent.

PETITIONER'S BRIEF.

I.

The decision of the Circuit Court conflicts with a decision of the Third Circuit.

In *Picking* v. *Penn. R.R. Co.*, 151 F. (2d) 240, *rehearing denied* 152 F. (2d) 753, the Third Circuit held that, by enacting the Civil Rights Act, Congress intended to, and did in fact, abrogate the privilege of state judicial officers *to the extent indicated by the statute.* The ratio decidendi of this case was that where a state judicial officer *deprives* one of a *federal right* by *purporting* to act or by acting under *color of* state law, he is liable under the statute. Thus, reasoned the Court, he is liable where he *misuses, abuses* or *exceeds* his legitimate authority as limited by the federal law.

This doctrine is in accord with the present status of the law. The gist of the action is whether, under the established rules of the United States Constitution and laws guaranteeing certain fundamental safeguards to every individual, the defendant has misused, abused, or exceeded his *legitimate* authority conferred on him by the state, or has wrongfully invoked that authority, thereby depriving an individual of a federal right.

In both the case at bar and the *Picking* case, the complaining party was deprived irrevocably of rights secured by the federal law. In both cases they were denied a trial or any kind of hearing. In the case at bar the petitioner was deprived of all his rights. He had no notice that either he or his rights were in danger, no opportunity to defend, and was unable to offer anything in his behalf to aid the respondent in his "inquiry into the facts".

The petitioner fails to see how the *Picking* case is overruled by analogy by the case of *Tenney* v. *Brandhove,* 341 U. S. 367 (R. 43). Not only do the material facts differ to a great degree, but in the *Tenney* case this Court expressly stated that the decision was predicated on the ground that the defendants, state legislators, acted *within* their legitimate authority. The Court recognized that there is liability in a case where a state legislator *exceeded* his authority. The petitioner submits, as will more fully appear below, that this decision is clearly distinguishable from the situation presented by the facts of the case at bar and the *Picking* case and that in fact the *Tenney* case is authority for the petitioner's contentions.

II.

The decision of the Circuit Court was decided in a way probably in conflict with the applicable decisions of this Court.

In the leading case of *Ex Parte Young,* 209 U. S. 123,

this Court enunciated the proposition that state officers could be reached *in their person* by the federal law, and the fact they were acting under state law did not bar the action. The general principle enunciated in this case has been affirmed by a long line of decisions, the most notable and recent of which is the decision in *Shelley* v. *Kraemer,* 334 U. S. 1, wherein it was made clear that state action was subject to the provisions of the Fourteenth Amendment and the mere fact that the act was that of the judicial branch of the government did not make the actions immune.

The principles enunciated above apply in equal force, if not more so, in cases arising under the Civil Rights Act. It should be noted at the outset that, prior to the enactment of this section, this Court held that a statute directed against the actions of private persons, without reference to their acting in their official capacity under the laws of the state, was not justified by any clause in the Fourteenth Amendment.

United States v. *Williams,* 341 U. S. 70.

It is therefore incumbent on the plaintiff to show that the defendant was acting under authority or pretense of authority conferred on him by state law. This can mean solely that the Civil Rights Act makes liable only those people who *as state officials misuse, abuse,* or *exceed* their *legitimate* authority as limited by federal law. This problem was settled by the case of *Screws* v. *United States,* 325 U. S. 91. It was therein held that under *color of law* meant under *pretense of law;* and though this Court has been divided on this case and its recent application, the petitioner submits that there can be no dispute in the case at bar.

The gist of the petitioner's contention is that the decision of the Circuit Court seems to say that under the doctrine of the *Tenney* case legislators are immune and therefore

judges are immune. If this be the case, then likewise should the executive be held immune. The petitioner cannot conceive of a statute under which the only persons who can possibly come within its provisions are to be held immune by *judicial* legislation.

In further support of his contention, which the petitioner intends to amplify if this Petition is granted, the petitioner submits that the decision in *Ex Parte Virginia,* 100 U. S. 339, is controlling in the case at bar. It was therein decided that a state judge was criminally liable for the violation of a federal statute in the selection of juries. The Court stated that his act was not judicial as the selection of juries was a ministerial act, but even if the act was judicial he would be liable as he exceeded his authority and went beyond the *spirit* of the state statute. Is not this the case here? Are the giving of notice, opportunity to defend, and a fair hearing *judicial* acts as such? And it should be noted that even though the respondent complied with the express requirements of the Massachusetts statute he did not comply with its *spirit.* This is borne out by the decision in *Petition of O'Leary,* 325 Mass. 179, wherein the Massachusetts Supreme Judicial Court held that a companion statute was not unconstitutional for not expressly requiring notice, *as it impliedly required notice* in conformance with the fundamental rules of due process. The Superior Court of Massachusetts applied this decision to the facts of the case at bar when it released the petitioner on a writ of habeas corpus, and it held that the statute under which the defendant acted required notice and hearing.

> *Francis* v. *Dolan, Massachusetts Superior Court for Suffolk County,* No. 456845.

Therefore, even if the respondent's act is considered judicial, it still falls within the doctrine of *Ex Parte Virginia,* supra.

III.

The precise question presented by this case is an important question of Federal law which has not been ultimately and conclusively settled, but should be so settled, by this Court.

This Court has not yet decided to what extent, if any, and under what circumstances a state judicial officer is liable under the provisions of the Third Civil Rights Act.

This is an important question of federal law as it involves, among other things, the relation between state and federal government, the correct interpretation of a most important federal statute, and the relation between individual rights and the powers and privileges of state judges.

The field of Civil Liberties has always been an important field. It is even more important when it involves other constitutional questions. The decision of the Circuit Court would seem to place immunity for a state judicial officer on a higher plane than due process and other fundamental rights guaranteed to the individual by our Constitution. Thus this case presents to this Court the question of whether one unlawfully imprisoned after being deprived of his most fundamental rights has any redress against judges or other officials who deprived him of those rights. In deciding this question this Court must come to grips with the vexing problem of the respective spheres and limitations of federal and state power. Thus the Court is faced with a question bristling with constitutional issues of the gravest nature.

IV.

The Circuit Court has sanctioned so far a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Both the District Court and the Circuit Court failed to follow this Court's long standing, well established rule of

statutory construction. The Circuit Court, without justification, ratified the view of the District Court that the statute in question was not intended to obliterate the common law principle of immunity (R. 27, 28, 40, 41, 42, 43, & 44.) Such decision was clearly improper and in violation of the principle enunciated by this Court in *Automatic Canteen Co.* v. *Federal Trade Commission,* 97 L. Ed. 899, where this Court outlined the proper approach in the construction of statutes. With all due respect to the learned Chancellor, we are not to be concerned, as was the District Court, with what Chancellor Kent would say (R. 28);— we are concerned with what Congress *did* say in enacting the Civil Rights Act.

An exact and a proper formulation of the issue in the case at bar illustrates clearly that this case is an instance where the exceptions so carefully noted in the *Tenney* case apply. The extremely narrow construction by the Circuit Court of the Civil Rights Act runs contrary, not only to the spirit of this Act and of the *Tenney* case, but also runs contrary to the well established principles of statutory construction laid down by this Court.

A glance at the decision in *Unexcelled Chemical Corp.* v. *United States,* 97 L. Ed. 486 at 489 and 490 clearly shows the proper judicial method of statutory construction:— "If this cause of action is not covered by that language, apparently none other is. It is not for us then to try to avoid the conclusion that Congress did not mean what it said. Arguments of policy are relevant when for example a statute has an hiatus that must be filled or there are ambiguities in the legislative language that must be resolved. But when Congress, though perhaps mistakenly or inadvertently, has used language which plainly brings a subject matter into a statute, its word is final—save for questions of constitutional power which have not even been intimated here."

Merely because a judge may not favor the progressive legislation by which judicial immunity is eliminated does not give that judge, whether he be a judge of the District Court or Circuit Court, the right to use any yardstick of statutory construction other than the yardstick sanctioned by this Court. Nor does it give such judge the right to repeal, by judicial legislation, the properly enacted statutes of the Congress of the United States. Congress has the right, without judicial interference or repealer, to enact legislation which it, Congress, feels will express the social purposes and aims of the nation, provided no constitutional provisions are violated. Here is a clear case of proper Congressional action and improper judicial repealer. The language in *Dalehite* v. *U. S.*, 97 L. Ed. 929, and *Central Bank* v. *U. S.*, 97 L. Ed. 872, very strongly supports the petitioner's contention in this regard. As one reads the clear language of the *Dalehite* and *Central Bank* cases in the light of the facts of the case at bar, it is clear that the Circuit Court was wrong in its interpretation of the statute.

It is respectfully submitted that Congress by enacting the Civil Rights Act intended to and did attach greater importance to the rights of the individual to his constitutional guarantees than to the judicial privilege of immunity. It is further respectfully submitted that the District Court and the Circuit Court, as hereinabove stated and as can be furher set forth in greater detail if this Petition is granted, failed to act properly in protecting the petitioner's rights under said Act.

Wherefore, it is respectfully prayed that a Writ of Certiorari issue to the United States Court of Appeals for the First Circuit.

Respectfully Submitted,

Isadore H. Y. Muchnick,

Attorney for Petitioner.